Supreme Court of the United States.

No. 65.—October Term, 1904.

Martha I. Hunt, Plaintiff in Error,
vs.
The Springfield Fire and Marine Insurance Company.

In error to the Court of Appeals of the District of Columbia.

[December 19, 1904.]

This was an action to recover on a policy of insurance upon household furniture and ornaments.

Defense: That it was provided that the policy should be void if the interest of the insured was other than the unconditional and sole ownership of the property insured, or if the "said property should be or become encumbered by a chattel mortgage," when in fact it was subject, at the time the policy was written, to three trust deeds to secure the payment of various sums of money. Plaintiff demurred to the pleas setting up this defense. The court overruled the demurrer, entered judgment for the defendant, which was affirmed by the Court of Appeals. (20 Apps. D. C. 48.)

Mr. Justice Brown delivered the opinion of the Court.

The sole question presented by the record in this case is whether the provision in the policy for the unconditional ownership of the property by the plaintiff, and for the non-existence of any chattel mortgage thereon, was broken by certain trust deeds to secure the payment of money in each case.

Plaintiff relies upon the familiar principle of law that the conditions of a policy of insurance, prepared as they are by the company, and virtually thrust upon the insured, frequently without his knowledge, must be construed strictly, and while the legal effect of a chattel mortgage and of a deed of trust to secure the payment of money may be practically the same, they are in law different instruments; and that a condition against one is not broken by the existence of the other. We recognize the rule laid down by this court in *Thompson* v. *Phenix Insurance Company*, (136 U. S. 287,) that in case of attempted forfeiture, if the policy be fairly susceptible of two constructions, the one will be adopted which is more favorable to the insured. This rule was reiterated in *McMaster* v. *New*

York Insurance Company, (183 U. S. 25,) but we cannot recognize it as applicable to this case.

A deed of trust and chattel mortgage with power of sale are practically one and the same instrument, as understood in this District. In the language of Mr. Justice Morris, in speaking of mortgages of real estate in *Middleton* v. *Park*, (3 App. Dist. Col. 149):

"The deed of trust is the only form of mortgage that has been in generaal use in the District of Columbia for many years. The common law mortgage is practically unknown with us; and every one understands that, when a mortgage of real estate here is spoken of, the deed of trust is what is intended. . . . The deed of trust is here used as the equivalent of mortgage; and so the term is universally used by the community. Indeed, while a mortgage is not necessarily perhaps a deed of trust, a deed of trust to secure the loan of money is necessarily a mortgage."

It was said by this court in *Shillaber* v. *Robinson*, (97 U. S. 68–78,) that "if there is a power of sale, whether in the creditor or in some third person to whom the conveyance is made for that purpose, it is still in effect a mortgage, though in form a deed of trust, and may be foreclosed by sale in pursuance of the terms in which the power is conferred, or by suit in chancery."

The legal effect of the two instruments has been recognized as practically the same in several cases in this and other courts. (*Platt* v. *Union Pacific R. R. Co.*, 99 U. S. 48–57; *Palmer* v. *Gurnsey*, 7 Wend. 248; *Eaton* v. *Whiting*, 3 Pick. 484; *Wheeler & Wilson Mfg. Co.* v. *Howard*, 28 Fed. Rep. 741; *Bartlett* v. *Teah*, 1 McCrary, 176; *Southern Pacific R. R. Co.* v. *Doyle*, 11 Fed. Rep. 253; *McLane* v. *Paschal*, 47 Texas, 365.)

There may be cases under particular statutes recognizing a difference between them in reference to the application of the recording laws, as appears to be the case in Maryland, (*Charles* v. *Clagett*, 3 Md. 82,) but in their essential features and in their methods of enforcement they are practically identical. Both are transfers conditioned upon the payment of a sum of money; both are enforceable in the same manner, and the difference between them is one of name rather than substance. The provision in the policy is one for the protection of the insurer, who is entitled, if he insists upon it in his questions, to be apprised of any fact which qualifies or limits the interest of the insured in the property, and would naturally tend to diminish the precautions he might take against its destruction by fire.

In passing upon the identity of the two instruments in this case we may properly refer to the further provision of the policy that the interest of the insured must be an unconditional and sole ownership. While the breach of this condition is not specifically urged in the briefs, we may

treat is as explanatory of the other condition against the existence of chattel mortgage. The company evidently intended by this provision to protect itself against conditional transfers of every kind. The contract of the company is a personal one with the insured and it is not bound to accept any other person to whom the latter may transfer the property.

The conditions of the policy in this case were broken by the trust deeds, and the judgment of the court below is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.